

Before the
Federal Communications Commission

Washington, D.C. 20554

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MAY 20 1992

Federal Communications Commission
Office of the Secretary

In re Applications of)
LRB BROADCASTING)
DAVID WOLFE)
ZENITRAM COMMUNICATIONS, INC.)
For Construction Permit for)
a New FM Station on Channel)
288A in Brockport, New York)

92-61
MM Docket No. 92-61
File No. BPH-901218MI
File No. BPH-901219MI
File No. BPH-901220MG

TO: Honorable Richard L. Sippel
Administrative Law Judge

**JOINT MOTION TO STRIKE INTEGRATION AND DIVERSIFICATION
STATEMENT OF ZENITRAM COMMUNICATIONS, INC.**

LRB Broadcasting ("LRB"), and David L. Wolfe ("Wolfe"),
by their attorneys, hereby submit their Joint Motion to
Strike the Integration and Diversification Statement of
Zenitram Communications, Inc. ("Zenitram") for its failure
to timely file its integration and diversification
statement as required by Section 1.325(c)(2). In support,
the following is shown:

1. The Assistant Chief, Audio Services Division, Mass
Media Bureau released the Hearing Designation Order,
("HDO"), DA 92-360 on April 13, 1992. Pursuant to Section
1.221(c), Notices of Appearance are due within 20 days after
the mailing of the HDO, or May 4, 1992. Section 1.325 of
the Commission's Rules requires that standardized
integration statements are due five days after the date
established for filing notices of appearance, or May 11,
1992.

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2. According to the Presiding Judge's Prehearing Conference Order, FCC 92M-473 released April 17, 1992, paragraph 4 states:

All parties who have timely filed their Notices of Appearance ("NOA") under 47 C.F.R. §1.221 shall, within five days of filing and service of their NOAs, effect the Standard Document Production ("SDP") under 47 C.F.R. §1.325(c)(1) and shall exchange Standard Integration Statements under 47 C.F.R. §1.325(c)(2).

3. Zenitram's Integration and Diversification Statement was not filed in accordance with the Presiding Judge's Prehearing Conference Order and the Commission's rules and regulations. It was filed late. Attached as Exhibit 1 is Zenitram's Integration and Diversification Statement. As evidenced by the Secretary's stamp, Zenitram's Integration and Diversification Statement was filed with the FCC on May 12, 1992. Further, despite Zenitram's representations made in its service list, its Integration and Diversification Statement was not mailed until May 12, 1992. Exhibit 2 is the envelope in which the Integration and Diversification Statement was mailed to Smithwick & Belendiuk. The envelope shows a post mark of May 12, 1992. Zenitram has failed to timely serve the Commission and opposing counsel with its Integration and Diversification Statement. In so doing Zenitram has violated the FCC Rules and the Presiding Judge's Prehearing Conference Order.²

² In the Prehearing Conference Order the Presiding Judge stated: "The parties are on notice that failures to comply with procedural and discovery orders of the presiding trial judge may

4. In filing its Integration and Diversification Statement late, Zenitram has violated Section 1.325 of the Commission's Rules. Zenitram has not sought a waiver to allow it to submit a late filed Integration and Diversification Statement. Rather, it dated its Integration and Diversification Statement and accompanying service list May 11, 1992 to indicate proper filing and service. A waiver of Section 1.325 of the Rules can not be justified at this time. A rule can be waived only if there is "good cause" to do so. Northeast Cellular Telephone v. FCC, 897 F.2d 1164 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969). See also, Industrial Broadcasting Co. v. FCC, 437 F.2d 680 (D.C. Cir. 1970) (indicating need for articulation of special circumstances beyond those considered during regular rulemaking). Zenitram has made no showing to support a waiver based on special circumstances or good cause.

5. To permit Zenitram to submit its Integration and Diversification Statement late would constitute impermissible upgrading. In order for mutually exclusive applicants to receive fair evaluations, there must exist a time at which applicants are enjoined from comparatively improving their position in response to the Commission's criteria. It is well established that an applicant may not

result in dismissal." A motion to dismiss Zenitram's application is pending for failure to produce any discovery documents. Zenitram seems to be incapable of following even the simplest of procedural requirements.

upgrade its proposal subsequent to the operative cut-off date.³ In this proceeding, the operative cut-off date to perfect an applicant's integration proposal was the date for filing the Standardized Integration Statement, or May 11, 1992. Zenitram had no integration proposal on May 11th. Its subsequent filing was an impermissible upgrade of its previous position. Zenitram had the opportunity to first review LRB's and Wolfe's Integration and Diversification Statement and then file its Integration and Diversification Statement.

6. The Commission's well established policy forbidding such upgrading especially applies when information is specifically required by an application or the Commission's rules.⁴ This is such a case. Section 1.325(c)(2) clearly provides the information regarding when a Standardized Integration Statement is due. Zenitram has violated the Commission's policy forbidding upgrading, with the submission of its late filed Standardized Integration Statement.

WHEREFORE, in light of the foregoing, LRB and Wolfe respectfully requests the Presiding Judge to issue an order

³ Alexander S. Klein, Jr., 86 FCC 2d 423, 434 (1981).

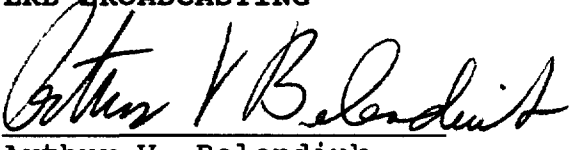
⁴ Leflore-Dixie, Inc., 100 FCC 2d 331, 334 (Rev. Bd. 1985); Midwest Broadcasting Company 70 FCC 2d 1489, 1494 (Rev. Bd. 1979).

striking Zenitram's Integration and Diversification
Statement.

Respectfully submitted,

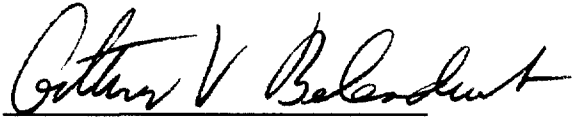
LRB BROADCASTING

By:


Arthur V. Belendiuk

DAVID L. WOLFE

By:


for J. Richard Carr

May 20, 1992

EXHIBIT 1

Stanley G. Emert, Jr.
568 E. Broadway Street
Maryville, Tennessee 37801
(615) 681-4311

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MAY 12 1992

Federal Communications Commission
Office of the Secretary

May 11, 1992

The Honorable Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 92-61
Brockport, New York

Dear Ms. Searcy:

I enclose the original and proper copies of a "Integration and Diversification Statement of Zenitram Communications, Inc." for filing in the above-captioned matter on behalf of Zenitram Communications, Inc.

Please send a stamped copy of the same to me in the self addressed stamped envelope.

Thank you for your kind assistance.

Sincerely,

Stanley G. Emert, Jr.

SGE
Enclosure

cc: Per Certificate of Service

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Before the
Federal Communications Commission
Washington, D.C. 20554

MAY 12 1992

Federal Communications Commission
Office of the Secretary

In re:

Applications of

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MM Docket No. 92-61

LRB BROADCASTING, INC.

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File no. BPH-901218MI

DAVID WOLFE

)

File No. BPH-901219MI

ZENITRAM COMMUNICATIONS, INC.

)

File No. BPH-901220MG

For Construction Permit
for a new FM Station in
Brockport, New York

To The Honorable Richard Sippel
Administrative law Judge

**INTEGRATION AND DIVERSIFICATION STATEMENT
OF ZENITRAM COMMUNICATIONS, INC.**

Zenitram Communications, Inc. ("Zenitram Communications"), hereby adopts and incorporate its previously submitted statement of integration and diversification, to wit (with certain additions):

1. The applicant is a corporation which is authorized to issue 200 shares with two classes of stock (Class A voting, and Class B nonvoting). Domingo Martinez, Jr. ("Martinez") owns 40 shares of Class A voting stock, being all of the voting shares. Kenneth L. Ramsey owns 160 shares of nonvoting stock, being all of the Class B nonvoting shares. The owner of nonvoting shares has rights of investment only, which stock specifically precludes its owner: from being an employee of the corporation; from serving as an independent contractor or agent in any material capacity for the corporation; from communicating with the owner of Class A or voting stock on matters pertaining to the day to day operations of the corporation's business; from selling his

stock without the prior consent of the Class A or voting stock owner; from having voting rights with regard to any matter of the corporation's business, including, but not limited to, removal of any employee, officer, or director of the corporation; from performing any service for the corporation with the exception of making loans to the corporation; from acting as surety for, the business; and from becoming involved in the management or operation of the business of the corporation.

2. Martinez will be the General Manager of the station. As General Manager, he will control all daily operational aspects of the station, including, but not limited to, business, sales, daily programming of the station, public relations, employment, hiring and firing, and policy making and implementation. He will work in excess of (40) hours per week at the station.

3. Martinez, has resided in the applicant's service contours since 1957, with the exception of the time of 1971 - 1981. His current address is 88 Averett Street, Rochester, New York, and has lived there since 1982. Immediately prior thereto, he lived at 58 Lux Street, Rochester, for one year. From 1957-1971, he lived at various addresses in Rochester, with the last address being 311 Remington Street, Rochester, for about 2 years. In the event of the award of the construction permit to Zenitram Communications, Martinez will relocate his home to Brockport, at least sixty (60) days prior to the station going on the air. The Applicant will claim credit for Martinez's past and future residence within Zenitram Communications' service contours. If it is determined that any of Martinez' residences, including his current residence, are not within Zenitram Communications's coverage contours, Martinez reaffirms his intention, as noted above, to move to Brockport, if Zenitram Communications is awarded a construction permit.

4. Zenitram Communications will claim additional enhancement credit

Martinez's broadcast/media experience. This experience has been:

1967(circa) - 1971 Spanish Language Production Director at Rochester, New York.

1978 - 1979 Producer and Host "Salinas Municipality informs community": WHOY Salinas, Puerto Rico.

1981-1982 Part-time Director and Producer of Spanish Language programs at WWVG in Rochester.

1982-present Part time Director and Producer of Spanish Language radio programs at WGMC-FM, in Rochester.

1988 - present- Owns Dynamic Productions and Advertising, Inc. participates in providing production services to governmental entities and educational institutions in Spanish Language programming.

5. Zenitram Communications will claim additional enhancement of Martinez's substantial past religious and civic participation all within its present service area. That participation is listed on Exhibit 1 hereto.

6. Zenitram Communications will claim further credit for Martinez's American heritage.

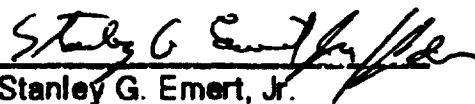
7. Zenitram Communications will employ the use of an auxiliary source at both the transmitter site and the studio site in the event of a primary outage.

8. Martinez is presently employed, and in the event of the grant Zenitram Communications's application, Martinez will resign from that employment and any other employment, at least sixty (60) days prior to the station going on to devote his full time attention to his managerial capacity at the station. Martinez also divest himself of any interest in Dynamic Production and Advertising, Inc.

event of the award of the construction permit to Zenitram Communications.

9. Zenitram Communications and no principal thereof has any attributible media interest. The nonvoting shareholder of Zenitram Communications is a nonvoting shareholder in other corporations which are applicants/permittees to broadcast stations. A detailed description of those interests is attached as Exhibit

Zenitram Communications, Inc.

by: 
Stanley G. Emert, Jr.
Its Attorney

Law Office of Stanley G. Emert, Jr.
2318 2d Avenue, Suite 845
Seattle, Washington 98121
(206) 525-5466

May 11, 1992

Exhibit 1
List of Domingo Martinez, Jr.' s Civic/Religious Participation

1. IBERO American Action League, 1967-present. Board member 1967-1971, and co-founder. Works to support the Hispanic community.
2. Puerto Rican Youth Development and Resource Center, approximately 1972-present. Provides public relations service for the agency.
3. Catholic Family Center, mid 1960's-present. Affiliated with Catholic Church, and helps families in need.
4. Conducted Disaster Relief Fund drives for approximately three (3) years in the 1980's for relief from catastrophes in Puerto Rico, San Salvador, Colombia, and Mexico. This served to unite the Hispanic in the Brockport area.
5. Has conducted two - three fund raising drives per year from the mid 1960's to the present for matters of interest in the Hispanic community. These matters normally relate to assisting Hispanic families in need.
6. Has been a member of a Multicultural Group since 1989 which helps people of different ethnic backgrounds understand each other.

Exhibit 2

Broadcast Interests in Applications of Kenneth L. Ramsey

Owns 80% nonvoting stock of ARB Communications, Inc., an applicant for a new FM station for Signal Mountain, Tennessee, FCC file # BPH-891101MH. Note-settlement documents were filed on July 31, 1991, whereby the application of ARB Communications, Inc. would merge with another applicant and become the permittee. Ultimately, the individual stockholders of ARB Communications, Inc. became individual stockholders of the surviving applicant, each owning minority interests.

Owned 80% nonvoting stock of KRB Broadcasting, Inc., an applicant for a new FM station for Clarksville, Indiana, FCC file # BPH-890905MD, which application has been dismissed.

Owned 80% nonvoting stock of New Era Communications Group, Inc., an applicant for a new FM station for Mount Juliet, Tennessee, FCC file # BPH-891012ND, which application has been dismissed.

Owned 80% nonvoting stock of Media Enterprises of Warrior, Inc. an applicant for a new FM station for Warrior, Alabama, FCC file # BPH-891218MG. Note-settlement documents were filed and approved whereby the application of Media Enterprises of Warrior, Inc. has been dismissed.

Owns 80% nonvoting stock of Bluegrass On-The-Air, Inc., an applicant for a new FM Station for Philpot, Kentucky, FCC file # BPH-900705MJ. Note-settlement documents were filed on July 31, 1991, whereby the application of Bluegrass On-The-Air, Inc. would be dismissed.

Owns 80% nonvoting stock of Triumph Communications, Inc., an applicant for a new FM station for Idalou, Texas, filed on November 1, 1990, FCC File #BPH-901101MI.

Owns 80% nonvoting stock of Cope Communications, Inc., FCC File #BPH-901115MH, which is the permittee of FM Channel 259, at Westwood, Kentucky.

Owned 80% nonvoting stock of Gorecomm, Inc., which has filed, or will file on or before November 15, 1990, an application for a new FM station for Morehead, Kentucky, FCC File #BPH-90115MF, which application has been dismissed pursuant to a settlement agreement.

Owns 80% nonvoting stock of Mandujano Communications, Inc., which filed an application for a new FM station for Amarillo, Texas on November 23, 1990, FCC File #901123MC. Pursuant to a settlement agreement, this application has been

granted.

Owns 80% nonvoting stock of Crystal Clear Communications, Inc., which has filed on December 14, 1990, an applications for a new FM station for Seelyville, Indiana, FCC File #901214MJ. This application has been designated for a hearing in MM Docket No. 92-62.

Owns 80% of nonvoting stock of Zenitram Communications, Inc., which has filed on December 20, 1990, an application for a new FM station for Brockport, New York, FCC File #901220MG. This application has been designated for a hearing in MM Docket No. 92-61.

Owns 80% nonvoting stock of Bayou Broadcasting, Inc., which has filed on December 31, 1990, an application for a new FM station for White Hall, Arkansas, FCC File # BPH-901231MB. Note-this is a single applicant, and is awaiting final approval subject to an amendment.

Owns 80% nonvoting stock of TCom, Inc., which has filed on January 21, 1991 an application for a new FM station for La Crosse, Wisconsin, FCC File #910122MA. Settlement documents have been filed whereby the application of TCom, Inc. would be dismissed, and TCom, Inc., would become the owner of one-third of the stock of Mississippi Valley Broadcasters, Inc., which will become the permittee of the station.

Owns 80% nonvoting stock of Staton Communications, Inc., which has filed on November 15, 1991, an application for a new FM station at New Albany, Indiana, for Channel 234.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Integration and Diversification Statement" has been sent by prepaid United States mail, first class, on the 11th day of May, 1992, to the following:

The Honorable Richard Sippel
Federal Communications Commission
2000 L Street N.W.
Washington D.C. 20554

Charles Dziedzic, Esq.
Chief, Hearing Branch
Federal Communications Commission
2025 M Street N.W.
Room 7212
Washington D.C. 20554

Chief, Data Management Staff
Audio Services Division
Mass Media Bureau
Federal Communications Commission
Room 350
1919 M Street NW
Washington, D.C. 20554

Richard J. Hayes, Jr., Esq.
13809 Black Meadow Road
Spotsylvania, Virginia 22553
Attorney for David Wolfe

Arthur Belendiuk, Esq.
Smithwick & Belendiuk, P.C.
2033 m Street, N.W., Suite 207
Washington D.C. 20036
Attorney for LRB Broadcasting

Stanley G. Emert, Jr.

EXHIBIT 2

Arthur Belendiuk, Esq.
Smithwick & Belendiuk
2033 M Street N.W., Suite 207
Washington D.C. 20036

CERTIFICATE OF SERVICE

I, Michelle M. Lamarre, a legal assistant in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 20th day of May 1992, copies of the foregoing were mailed, first class, postage paid to the following:

The Honorable Richard L. Sippel*
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 214
Washington, DC 20554

Norman Goldstein, Esquire*
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Suite 7212
Washington, DC 20554

Richard J. Hayes, Jr., Esquire
1359 Black Meadow Road
Spotsylvania, VA 22553
and

J. Richard Carr, Esquire
Law Offices of J. Richard Carr
P.O. Box 70725
Chevy Chase MD 20813-0725
Counsel for David Wolfe

Stanley G. Emert, Jr., Esquire
568 E. Broadway Street
Maryville, TN 37801
Counsel for Zenitram
Communications, Inc.


Michelle M. Lamarre

*By Hand